

Pension Benefit Guaranty Corporation

§ 4901.14

NW., Washington, DC 20005-4026. To expedite processing, the words “FOIA request” should appear clearly on the request and its envelope.

§ 4901.12 Description of information requested.

(a) *In general.* Each request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* If the description is insufficient to enable a professional employee familiar with the subject area of the request to locate the record with a reasonable amount of effort, the disclosure officer will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

(c) *Requests for categories of records.* Requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of this section and paragraph (a)(3) of FOIA if the PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the disclosure officer shall promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

§ 4901.13 Receipt by agency of request.

The disclosure officer shall note the date and time of receipt on each request for access to records. A request shall be deemed received and the period within which action on the request shall be taken, as set forth in § 4901.14 of this part, shall begin on the next business day following such date, except that a request shall be deemed re-

ceived only if and when the PBGC receives—

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if the PBGC determines that such charges may be substantial and so notifies the requester. Consent may be in the form of a statement that costs under subpart D will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in a request.

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 10 working days after receipt of a disclosure request (subject to extension under § 4901.16), the disclosure officer shall take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section.

(b) *Request granted.* If the disclosure officer determines that the request should be granted, the requester shall be so advised and the records shall be promptly made available to the requester.

(c) *Request denied.* If the disclosure officer determines that the request should be denied, the requester shall be so advised in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld. The denial shall also include the name and title or position of the person(s) responsible for the denial and outline the appeal procedure available.

(d) *Records not promptly located.* As to records that are not located in time to make an informed determination, the disclosure officer may deny the request and so advise the requester in writing with an explanation of the circumstances. The denial shall also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and advise the requester that the

§ 4901.15

29 CFR Ch. XL (7–1–01 Edition)

search or examination will be continued and that the denial may be withdrawn, modified, or confirmed when processing of the request is completed.

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. To expedite processing, the words “FOIA appeal” should appear clearly on the appeal and its envelope.

(b) *Receipt and consideration of appeal.* The General Counsel shall note the date and time of receipt on each appeal and notify the requester thereof. Promptly and in any event within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel shall issue a decision on the appeal.

(1) The General Counsel may determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) If the denial appealed from was under § 4901.14(d), the General Counsel shall consider any supplementary determination by the disclosure officer in deciding the appeal.

(3) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat such an action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose non-disclosure is appealed, the General Counsel shall either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted shall be promptly made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in paragraph (a)(4) of FOIA. The General Counsel’s decision shall be the final action of the PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals shall be collected in one file available in the PBGC’s public reference room under § 4901.4(d)(1) and indexed under § 4901.4(e).

§ 4901.16 Extensions of time.

In unusual circumstances (as described in subparagraph (a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The disclosure officer (with the prior approval of the General Counsel) or the General Counsel, as appropriate, shall notify the requester in writing within the original time period of the reasons for the extension and the date when a response is expected to be sent. The maximum extension for responding to a disclosure request shall be 10 working days, and the maximum extension for responding to an appeal shall be 10 working days minus the amount of any extension on the request to which the appeal relates.

§ 4901.17 Exhaustion of administrative remedies.

If the disclosure officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester’s administrative remedies shall be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow the PBGC additional time to act as provided in FOIA, processing of the request or appeal shall